



2. Failure to consult adequately with a defendant facing " life sentence " in the penitentiary;

3. Failure to investigate and prepare for trial;

4. Failure to retain defense private psychiatrist and failure to investigate Castro-Gomez's Mental and Emotional Conditions;

5. Trial counsels deprived petitioner of psychiatric or psychological examination ordered by the trial Court in violation of 18 U.S.C. Section 4244(b), in violation of petitioner's fair trial under Due Process Clause and in violation of Defendant's Sixth Amendment Rights to the United States Constitution;

6. Failure to challenge and object to the admissibility of government star witness Raul Palacios-Diaz's single handed bad acts and his plea of guilty which were brought to the attention of the petit jurors;

7. Failure to interview and call critical defense witness, Mr. Marcelino Perez-Soto, who would have corroborated

Defense counsels' decision to call Petitioner to testify without considering defendant's mental defect, without preparing him for the testimony was deficient performance;

9. Comments about Petitioner's state of mind made by defense counsel Lydia Lazzirribar-Masini, amounted to deficient performance;

10. Failure of Lead Trial Counsel Jose F. Quetglas to prepare and be present at sentencing amounted to deficient performance;

11. Failure to request that a new PSI be prepared and failure to object to Section 4B1.1. before sentencing was deficient performance as the government alluded to on pages 26 and 27 of its Appellate Brief;

12. Failure to raise or preserve meritorious issues during appellate proceeding was deficient performance;

13. The cumulative impact of multiple deficiencies in defense counsels' performance prejudiced the defense.

MEMORANDUM OF LAW.

A. Petitioner, proceeding pro-se, filed a motion pursuant to 28 U.S.C. Section 2255 on February 22, 2005.(DOC-432). Although phrased as separate errors, all claims raised relate to one single, overriding constitutional error: That petitioner Castro-Gomez was denied effective assistance of counsel at all phases of his trial. Based on this amended petition and the previous petition and Affidavit, including his Exhibits and other all potential evidence to be introduced, the prosecutor will not oppose the vacation of the conviction and sentence or at least an evidentiary hearing on the issue of lead trial counsel's abandonment of the penalty phase of the trial and all counsels constructive denial of counsels. SEE: 18 U.S.C. Section 4244(b) and (c). See also STICKLAND V. WASHINGTON 466 U.S. 668, 80 L.ED. 2D 674, 104 S.Ct. 2052 ( May 14, 1984 ).

Petitioner is awaiting all Affidavits to be further introduced before this Honorable Court.

STATEMENT OF THE CASE.

B. Legal assistant to the undersigned pro-se litigant, as provided in JOHNSON V. AVERY, 393 U.S. 483, 21 LER. 2D 718 ( 1969 ), supra has reviewed the following materials which are pertinent to the issues raised in this pleading:

1. Petitioner's motion of February 17, 2005, including Affidavit of Cesar Roberto Castro-Gomez, and Section 2255 forms, in which the undersigned listed Constructive Denial of Counsels at all stages of the trial.

2. Petitioner Castro-Gomez's Exhibit A, showing trial Court's Order ordering psychiatric examination of Cesar Roberto Castro-Gomez before trial.

3. The Statement of Lydia Lizarribar-Masini naming the mental status of Castro-Gomez, herein denominated as Exhibit B.

4. Petitioner Cesar Roberto Castro-Gomez's Exhibit C, showing evidence of prejudicial differences between Castro-Gomez and Lead trial counsel Jose F. Quetglas. Attorney

Jose F. Quetglas failed to consult with petitioner for his side of the case, according to the records. Lead counsel Quetglas refused to interview defense witnesses called at trial and woefully failed to interview or subpoena defense critical witnesses who could have confirmed petitioner's mental defect defense.

5. The August 9, 2001, motion filed " too late ", and without interview of the witness for the production of Elliot Garcia Agosto, herein denominated as Exhibit D.

6. The August 7, 2001, late filing of Notice of Duress Defense by Court appointed attorney Lydia Lizarribar-Masini, denominated as Exhibit E.

7. The August 9, 2001, late Order during trial to the Warden at MDC Guayanabo to produce Elliot G. Agosto's body herein styled Petitioner's Exhibit F.

8. The August 6, 2001, motion to seal by AUSA Aixa Maldonado-Quinones, received by Castro-Gomez on February 23, 2005, and denominated as Composite Exhibit G.

9. The August 14, 2001, " Sealed Document " in vault

by the prosecutor and hereat denominated as Exhibit H, which was received on February 23, 2005.

10. The March 22, 2005, Supplemental Affidavit of Cesar Roberto Castro-Gomez, denominated as Exhibit I.

11. Petitioner Cesar Roberto Castro-Gomez's Exhibit J., showing government's Appellate Brief pages 26 and 27, wherein the Prosecutor was lecturing Appellate and Lead trial Counsel for woeful failure to object to U.S.S.G. Section 4B1.1. enhancement; which counsel lately decided to argue on Appeal.

12. The April 23, 1997, Motion by Cesar Roberto Castro-Gomez requesting authorization to retain expert Service to retain a forensic " Psychiatric And A Forensic Psychiatrist and a Neuropharmacologist? herein denominated herein denominated as Exhibit K.

13. The January 21, 1997, Notice that because of Defendant Castro's mental defect, he became confused so much so that he started using drugs inside MDC Guyanabo- Detention Center, and was very sick. Defendant was to be sent to an institution in the Continental U.S.A. to be evaluated. Exhibit L.

14. The May 19, 1997, ( Doc. 52 ) Order as to Cesar Roberto Castro-Gomez, granting ( 48-1 ) motion for mental examination. USM to transfer Defendant to BURTNER FEDERAL MENTAL EXAMINATION, in order to determine defendant's mental competency, et cetera, as stated herein. ( Signed by Judge Juan M. Perez-Giminez, entered on 5-22-1997, and herein denominated as Exhibit M.

15. The August 28th 2003, Appellate Brief of Appellee, United States, herein submitted as pages 26,27,28,29,30,31 and page 34, and denominated as Exhibit N.

16. Four Volumes of Trial Transcripts.

17. The 1997 Presentence Investigation Report.

18. The Appellate Briefs of the Parties.

19. The August 7, 2001, late Motion to reconsider the production for defense trial Mr. Elliot Garcia Agosto, Exhibit O.

20. Denial as to Elliot Garcia Agosto's production herein denominated as Exhibit P.



**BACKGROUND.**

C. The Civil Case Number in this Section 2255 proceeding is 05-1257(PG). As at the filing of this Amended Petition, the Habeas Corpus Magistrate Judge has not issued Order To Show Cause why petitioner is not entitled to the relief requested. Consequently, the prosecutor has not filed a Responsive Pleading to the undersigned Section 2255 Motion, and Petitioner invokes Federal Rule Of Civil Procedure Rule 15(a).

**FACTS.**

D. On August 6, 2001, petitioner told the trial Court that his new lead counsel Mr. Jose F. Quetglas had not heard his side of the case for the purposes of trial. Petitioner moved for continuance " so that he could confer adequately with with lead trial counsel Mr. Jose F. Quetglas." Instead of granting a continuance for purposes of adequate consultation with lead trial counsel, for interview of defense witnesses, for decision of Defense at Trial and for appropriate list of defense witnesses, the Trial Court continued the trial since counsel said nothing about the continuance.

The trial court saw former plea counsel Lizarribar-Masini and instantly appointed her to join the defense team for trial the next day. Ms. Lizarribar did not prepare for trial and she sat for trial the next day. She started filing pre-trial motions as the trial progressed from August 7, 2001, as the records and files of the case as attached herein show. Appointed counsels Lizarribar and Queglas knew of the Court's Order for psychiatric examination but did not do anything about it. Counsel Lizarribar knew that petitioner's wife was worried about petitioner's mental health problems before arrest. Additionally, former counsel Lizarribar knew that petitioner's mental health problems led him to start using drugs while incarcerated at MDC Guyanabo, federal detention center in Puerto-Rico. Since newly appointed counsel Queglas did not conduct any investigation, nothing was done.

Petitioner's witnesses were not interviewed before or during trial as noted above. Petitioner himself was not prepared by his trial counsels before he was put on stand for his trial testimony. Petitioner's counsels did not object to the presentence investigation report, and additionally did not object to the prosecution's

enhancement under U.S.S.G. Section 4B1.1, as the prosecutor argued in her Appellate Brief at pages 26 through 31.

Trial counsels did not file motion to suppress due to the Custom's violation of petitioner's Fourth Amendment Right.

The government refers to the record on Appeal when it cited to the trial transcripts. Because the Docket Sheet for this Court maintains the original docketing, the transcripts will be referred to by the District court Docket number, Volume number and page number in this amended motion.

The government's statement of facts on Appeal are erroneous on two(2) serious grounds. The government did not note that the Court Ordered Psychiatric Examination of petitioner Castro-Gomez. Moreover, the government failed to note that Castro-Gomez notified the trial Court that he has not met with lead trial counsel for his side of the facts of the case. That no preparation was made and that no witness was interviewed in order to establish petitioner's mental illness and the threats received from Santiago, the architect of the case in chief.

PETITIONER CASTRO-GOMEZ ADDRESSES THOSE COUNSELS' DEFICIENCIES THAT THIS COURT SHOULD FIND TO HAVE BEEN CLEARLY BELOW AN OBJECTIVE STANDARD OF REASONABLENESS.

F. FAILURE TO MOVE FOR CONTINUANCE ON AUGUST 6, 2001.

As noted in the statement of the case, on August 6, 2001, petitioner notified the trial Court that he had not discussed the case with newly appointed attorney Jose Quetglas. Petitioner requested trial Court to postpone the trial scheduled for August 7, 2001, so that he could adequately consult with newly Court appointed attorney Quetglas. The trial Court did not postpone the trial. Instead, the trial Court noticed former Court appointed plea attorney Lydia Lazirribar-Masini in the Courtroom, and instantly appointed her "for trial the next day". Also, newly Court appointed counsel for trial Lazirribar did not prepare for trial.

None of the two(2) attorneys appointed for trial of August 7, 2001, moved for continuance, in order to consult with petitioner for trial purposes. Beginning from August 7, 2001 to August 13, 2001, when the trial ended, none of the trial attorneys conferred with petitioner for the purposes of trial.

Instead, and as the Exhibits attached herein verify, newly Court appointed counsels embarked on filing pre-trial motions as the trial moved on. Please see Exhibits D, E, F, and others.

Had newly lead Court appointed counsel Quetglas moved for continuance for the trial, he could have relied on petitioner's mental defect as a defense at trial. Had newly Court appointed attorney for trial Ms. Lizarribar moved for continuance, she could have interviewed Marcelino Perez who could have corroborated the unresearched defense of Duress. Worst yet, Ms. Lizarribar may or may not have related petitioner's mental defect to newly Court appointed counsel Quetglas. The failure to move for continuance to file motions counsels started filing while the trial was in progress prejudiced this petitioner. So, also is the failure to interview witnesses and failure to effect Court Ordered mental evaluation. Had the mental evaluation been conducted, trial counsels would have relied on valid defense of mental defect as the Court rightly Ordered.

**G. FAILURE TO CONSULT ADEQUATELY WITH A DEFENDANT  
FACING LIFE SENTENCE IN THE PENITENTIARY.**

Petitioner asserts that newly Court appointed lead counsel Jose F. Quetglas saw him two(2) times. On the first day, counsel introduced himself as newly appointed trial counsel. Counsel spent about two(2) minutes. He discussed nothing about the case and told petitioner he would be back. On the second visit, counsel again was in a hurry to leave. He told petitioner that the trial will begin on or about August 6, 2001, and that he would return before the 6th of August 2001, to discuss the case. He asked petitioner whether he intends to call witnesses. Petitioner said certainly. Counsel was given names and addresses of defense witnesses for interview. However, trial counsel never returned to discuss the case with petitioner, never interviewed any defense witnesses even those who appeared at trial to testify, and lead trial counsel never wrote petitioner a single letter to announce his trial strategies. Petitioner next saw counsel in the Courtroom on August 6, 2001. The trial started on August 7, 2001, and the undersigned petitioner never saw a single government discovery in his own case.

H. FAILURE TO INVESTIGATE AND PREPARE ADEQUATELY  
FOR FEDERAL TRIAL.

Upon receiving the names, addreses and telephone numbers of potential witnesses, lead trial counsel Quetglas failed to interview the witnesses. Also, co-counsel Lydia Lazirribar did not interview both witnesses that testified at trial and those who could not testify even though their testimonies were needed to corroborate a valid defense of mental defect, and Duress defense. For example, trial counsels did not visit or interview Marcelino Perez-Soto who introduced petitioner Castro-Gomez to Santiago.

Trial counsels failed to interview Mario Duran and Ms. Colon before they testified at the trial of the undersigned. Additionally, trial counsels did not interview or make any attempt to talk to any government witness.

Had counsels investigated or prepared for trial, a critical witness named Marcelino Perez-Soto would have confirmed counsels' Duress defense. And further could have known Duran's testimony. Most importantly, counsels failure to interview Colon or retain expert psychiatric person, deprived petitioner of this defense.

I. FAILURE TO INVESTIGATE CASTRO-GOMEZ'S MENTAL AND EMOTIONAL CONDITION.

Lead counsel Quetglas failed to study or review the Docket Sheet or obtain discovery. Had counsel discussed the case with petitioner or studied the files and record of the case, counsel Quetglas would have learnt about petitioner's mental condition or seen the Judge's Order regarding the need to evaluate the petitioner's mental status to assure of the petitioner's competency to stand trial.

Most importantly, trial counsel failed to investigate or retain defense psychiatrists in order to investigate substantial evidence of mental and emotional problems in front of them.

J.

TRIAL COUNSELS DEPRIVED PETITIONER CASTRO-GOMEZ OF PSYCHIATRIC AND PSYCHOLOGICAL EXAMINATION AS ORDERED BY THE TRIAL COURT IN VIOLATION OF 18 U.S.C. SECTION 4244(b) AND IN VIOLATION OF FAIR TRIAL UNDER THE DUE PROCESS CLAUSE AND THE SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

A close observation of the Docket Sheet, reveals on page...

DOC( ), that the trial court was correct to have Ordered the Examination and/or Evaluation of defendant Castro-Gomez's psychiatric and psychological status. The trial Court issued the



Order to transport Castro-Gomez to Butner Mental Institution due to the need to evaluate petitioner for Mental Defect. For example, this record reveals that Castro-Gomez's Mental Problem was clear so much so that his wife called the probation officer to take Castro-Gomez in custody. A very hard thing for a wife to do, according to ineffective counsel Lizarribar. Before his arrest, petitioner was not in control of his thoughts. Other people controlled his thoughts because of his State of Mind.

Because of the evidence of his mental defect and upon being incarcerated, the trial Court Ordered psychiatric and emotional examination at FCI Butner Medical Institution at Butner North Carolina. See: Exhibit M, supra. However, former plea attorney Lydia Lizarribar-Masini, single handedly and without expert opinion and " Family Permission ", " Blocked " Petitioner's right to be certified fit to stand trial. As at the time of filing of this motion, petitioner is still disturbed, almost five years after trial.

K.

PETITIONER ADOPTS HIS STATEMENT OF CASE TO ISSUES 7,8,9  
10,11 AND 12.

The enumerated omissions, acts and other conduct of counsels on pages 2 and 3 of this amended petition, under denial of effective assistant of counsel and styled issues 7,8,9,10,11 and 12 are reaffirmed as statement of case and each paragraph of his statements of his case in the original and amended petition herein is incorporated by reference.

The crux of petitioner's claims are: " The failure of counsels to adhere to the trial Court's Order regarding mental evaluation of Castro-Gomez in violations of Due Process Of Law and Sixth Amendment to the United States Constitution."

Moreover, the failure of counsels to interview and uncover the facts from petitioner Castro-Gomez's family, witnesses, and MDC Guyanabo officials in order to uncover his mental status before and after petitioner's incarceration denied petitioner effective assistance of counsel. Seriously put, the records before counsels confirm petitioner's mental problems before and during this petitioner's incarceration.

STATEMENT ON EVIDENTIARY HEARING.

Petitioner Castro-Gomez states facts to the issues above and incorporated with his original petition, which if true, would establish a right to relief. Consequently, he is entitled to an evidentiary hearing. BIRT V. MONTGOMERY, 725 F.2d 587, 591 ( 11th Cir. 1984 ) Cert-Denied, 469 U.S. 874 ( 1984 ). See also, BERTHOFF V. UNITED STATES, 140 F.Supp.2d 50 ( D. Mass 2001 ). The issues before the Court is whether the petitioner suffered constructive denial of counsel when his counsels failed in the above acts, omissions and conduct listed herein and in the original petition. Given the serious implications of the above issues before this Honorable Court, the Court should fashion out relief or schedule an evidentiary hearing to permit petitioner to call his witnesses including his former defense counsels. Petitioner Castro-Gomez will demonstrate further that he met the two prongs of STRICKLAND.

**CONCLUSION-**

The issues for determination by the Court are whether the Court will require an evidentiary hearing on all of the above issues or part of the issues or whether the Court is satisfied from the records attached herein and those to be turned over to the Court during the evidentiary hearing that counsels' performance were constitutionally defective. When the Court grants an evidentiary hearing, the issue will be whether the evidence herein and others to be introduced upon submission by the undersigned's investigators satisfy the two-pronged test of *STRICKLAND V. WASHINGTON*, 466 U.S. 688 ( 1984 ).

Seriously put, Castro-Gomez's Due Process and Sixth Amendment Rights were violated when his attorneys failed to ensure that the Court's Order for evaluation to determine competence to stand trial was effected.

THEREFORE, the motion to vacate, set aside, or correct conviction and sentence of Cesar Roberto Castro-Gomez should be granted as to all grounds.

RESPECTFULLY SUBMITTED,  
*Cesar R. Castro Gomez*  
\*CESAR\*ROBERTO\*CASTRO-GOMEZ  
CESAR ROBERTO CASTRO-GOMEZ.

**CERTIFICATE OF SERVICE.**

I, CESAR ROBERTO CASTRO-GOMEZ, hereby certify that on 4th day of April 2005, the foregoing AMENDED MOTION TO VACATE was mailed two copies to the Clerk of the Court and one copy to the U.S. Attorneys Office, by depositing said copies in the FCI ESTILL PRISON, U.S. Postal Service, Certified Mail, with adequate postage affixed thereon on to insure their delivery as follows:

The Honorable Clerk of the Court  
ATTENTION: MICHAEL MCDOUGALL GOTAY, Honorable Deputy Clerk  
United States District Court  
District of Puerto Rico  
Federal Building  
Carlos Chardon Avenue, Room 150  
San Juan, Puerto Rico 00918-1767.

ATTENTION: United States Attorneys Office  
District of Puerto Rico  
Federal Building  
150 Carlos Chardon Avenue  
San Juan, Puerto Rico 00918-1767.

This 4th day of April 2005.

Most Respectfully Submitted,

*Cesar R. Castro Gomez*  
\*\*\*\*\*

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